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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 940

LOCAL 780, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through JONATHAN R. REYNOLDS, its business agent and representative, and LOCAL 666, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES OF THE UNITED STATES AND CANADA, AFL-CIO, by and through ARTHUR W. BEEMAN, its business agent and representative,

Petitioners,

vs.

RADIO CORPORATION OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second District of the State of Florida

PETITIONERS' REPLY BRIEF

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Cases

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Manhattan Life Ins. Co. of New York v. *Cohen*, 234 U. S. 123 (1914) 3

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McLean Distributing Co. v. *Brewery & Beverage Drivers, Warehousemen & Helpers, Local 993*, 254 Minn. 204, 94 N. W. 2d 514, *cert. denied*, 360 U. S. 917 (1959) 7

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National Surety Co. v. *Willys-Overland, Inc.*, 103 Fla. 738, 138 So. 24 (1931) 6

New Amsterdam Casualty Co. v. *Utility Battery Mfg. Co.*, 122 Fla. 718, 166 So. 856 (1935) 6

Philadelphia Marine Trade Ass'n v. *Int'l Longshoremen's Ass'n, Local 1291*, 382 Pa. 326, 115 A. 2d 733, *cert. denied*, 350 U. S. 843 (1955) 7

Raley, et al. v. *Ohio*, 360 U. S. 423 (1959) 3

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Sinclair Refining Co. v. *Atkinson*, 370 U. S. 195 (1962) 7, 8

Tampa Water Works Co. v. *Wood*, 104 Fla. 306, 139 So. 800 (1932) 4

Textile Workers Union v. *Lincoln Mills*, 353 U. S. 448 (1957) 8

Tidewater Express Lines v. *Freight Drivers, etc.*, 230 Md. 450, 187 A. 2d 685 (1963) 2, 3

Whitney v. *California*, 274 U. S. 357 (1927) 3

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Statutes

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Petitioners,

VS.

RADIO CORPORATION OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second District of the State of Florida

PETITIONERS' REPLY BRIEF

Petitioners, in their petition, have challenged the jurisdiction of the Florida court to restrain employees from respecting a peaceful primary picket line. In support of their petition, they point to the doctrine of federal pre-emption in picketing cases and the provisions of the Norris-LaGuardia Act, (47 Stat. 70 *et seq.*, 29 U. S. C. § 101 *et seq.*) limit-

ing the powers of courts to issue injunctions in labor disputes, which Act, they contend, is part of a federal body of labor law applicable to state courts. Respondent, while contending state courts have the power to issue injunctions in labor disputes, challenges the jurisdiction of this Court to review the state court's determination. To the extent that Respondent raises matters not treated in our Petition, some brief comment will be made.

Raising of Federal Question Below

Respondent contends that Petitioners' second question (applicability of Norris-LaGuardia Act) was not seasonably raised below and is therefore not properly before this Court. Respondent is in error. The question was litigated before the District Court of Appeal (the last Florida tribunal to express an opinion) and the Court not only expressly decided the question but went to great lengths to express the basis for its holding. Hence, relying upon state court cases[1] which this Court declined to review, the Florida court stated that "Numerous other state courts have sustained their right, jurisdictionally, to utilize injunction against a strike and picketing for breach of a collective bargaining agreement." (Pet., App. D, p. 25 a). And, the Florida Court relying upon a Maryland case [2] noted that "state courts which have permitted injunctions for breach of an existing labor agreement generally are either in states having no anti-injunction statute, such as California and Ohio, or where, as in Minnesota and Pennsylvania, there is express statutory exemption of breaches of collective bargaining agreements

1. See Footnote 5, Court of Appeal Decision, Pet., App. D, p. 25 a.

2. *Tidewater Express Lines* v. *Freight Drivers, etc.*, 230 Md. 450, 187 A. 2d 685, 688 (1963).

from the coverage of anti-injunction statutes." (Pet., App. D, pp. 25a-26a)[3] Significantly, in aid of its position that certiorari should not be granted, Respondent states that this Court has, on at least four different occasions, denied review of the exact question presented in our Question 2, citing the identical cases cited by the District Court of Appeal in its decision. (See Resp. Brief, p. 8). How then can Respondent contend that the question was not considered?

"Insofar as Florida is concerned," stated the Florida court, "there is no interdiction, either by statute or through any decision of our Supreme Court which curtails jurisdictional power of the state court to entertain a proceeding such as this; nor, as to the subject matter here involved, does any act of Congress which may be restrictive as to federal court jurisdiction express such a limitation upon jurisdiction of a state court." (Pet., App. D, p. 26a). Obviously, the question was considered and decided and it is an "elementary rule that it is irrelevant to inquire how and when a Federal question was raised in a (state) court . . . when it appears that such question was actually considered and decided." *Manhattan Life Ins. Co. of New York* v. *Cohen*, 234 U. S. 123, 134 (1914). *See also, Indiana ex rel Brand* v. *Anderson*, 303 U. S. 95, 98 (1938) and *Raley, et al.* v. *Ohio*, 360 U. S. 423, 436-437 (1959). And, of course, the opinion of the state court is part of the record for the purpose of determining whether a federal question has been raised. *Murdock* v. *Memphis*, 20 Wall. 590, 633 (1875); *Gross* v. *United States Mortgage Company*, 108 U. S. 477, 485-486 (1883); *Whitney* v. *California*, 274 U. S. 357, 361-362 (1927).

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3. Significantly, the Court in *Tidewater* stated that it felt its decision was controlled by the Maryland anti-labor injunction statute, Code (1957), Art. 100, Sec. 65, which is patterned after Section 4 of the Norris-LaGuardia Act, 29 U. S. C. 104.

Final Judgment

Respondent attacks the jurisdiction of this Court, contending that its judgment below was not a final one within the meaning of 28 U. S. C. § 1257. Yet, the Florida court specifically held that "Absent a congressional or state enactment or a judicial pronouncement by the United States Supreme Court or the Florida Supreme Court to the contrary, jurisdiction of the state court is not divested." (Pet., App. D, p. 26a). Thus, the Florida court asserted its jurisdiction to deal with a controversy beyond its power and this assertion was final, subject to no further state review after the Supreme Court of Florida had denied certiorari. See *Tampa Water Works Co.* v. *Wood,* 104 Fla. 306, 312-313, 139 So. 800 (1932); *In re Wilkins' Estate,* 136 Fla. 86, 88, 186 So. 826 (1938); *Savage* v. *Horne,* 49 So. 2d 329, 330 (1950); and *Davis* v. *Strople,* 39 So. 2d 468, 469 (1949).

Petitioners' entire argument below revolved around the absence of jurisdiction in the state court. Whether the question of jurisdiction is approached from the standpoint of federal preemption or from the applicability of Norris-LaGuardia, Petitioners contend that the state court was without power. And, the state court ruled that it had such power notwithstanding federal preemption or Norris-LaGuardia. Irrespective of the merits, such determination was final and binding and with this even Florida would agree, as reflected in the cases cited above. The federal question presented here is whether the Florida courts had the power to issue its injunction. And, as this Court held in *Local No. 438 Construction & General Laborers' Union* v. *S. J. Curry, et al.,* 371 U. S. 542, 548 (1963) "Whether or not the (state) courts have power to issue an injunction is a matter wholly separate from and independent of the merits of respondents' cause." In *Curry,* this Court held that it had jurisdiction

to review on certiorari the judgment of the Supreme Court of Georgia reversing the denial by the trial court of a temporary injunction—precisely the situation here. The Court pointed out that "There is no doubt that the jurisdiction of the Georgia courts has been finally determined by the judgment below and is not subject to further review in the state courts." Here, no less than in *Curry*, the embracing of Respondent's position would seriously erode the national labor policy, render entirely illusory Petitioners' right of review and effectively dispose of any rights Petitioners may have.

Alleged Mootness

Having secured its order below and judicially coerced employees to cross the picket line and other employees from inducing fellow employees to respect the picket line,[4] Respondent has nothing more to achieve and hence now contends that the matter is moot.[5] This, like the other contentions of Respondent, reflects the "hit and run" aspects of re-

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4. Respondent takes exception in its brief (p. 2) to statements in Petitioners' Statement which "make it appear . . . that Respondent sought a blanket order preventing all picketing by the Petitioners, and enjoining the mere respecting of picket lines." Respondent contends that no blanket order was sought or granted and that it was not seeking an injunction limited to the respecting of picket lines. With respect to the first point, we cannot see how paragraph 1 and sub-paragraph a of the Temporary Restraining Order (Pet., App B, p. 6 a) can be interpreted in any other way than a blanket order. With respect to the second point, we will not quibble with Respondent over whether it sought to restrain only the respecting of picket lines or that plus something more. It is sufficient to come within the ambit of the preemption doctrine that Respondent admittedly sought to restrain employees from respecting a picket line established at their own place of employment.

5. Respondent states that the dispute between the parties had expired due to the signing of a new labor agreement (Brief, p. 17). Respondent failed to note, however, that the new agreement expired on October 6, 1964, and no new agreement has yet been consummated.

straining orders in labor disputes, particularly in areas where there is a lag in accepting the principles of our national labor policy. The reasons for this Court assuming jurisdiction are as cogent here as they were in this Court's decision in *Liner* v. *Jafco, Inc.*, 375 U. S. 301 (1964). Here, too, has Respondent posted an indemnity bond (Pet., App. B, p. 7a; See Notation, Rec. 24). Contrary to Respondent's assertions (Brief p. 20) more than nominal damages were suffered by Petitioners and more than nominal damages are recoverable under Florida law under an injunction bond in view of Florida's allowance of attorney's fees [6] (See *National Surety Co.* v. *Willys-Overland, Inc.*, 103 Fla. 738, 741, 138 So. 24, 25-26 (1931); *Wittich* v. *O'Neil*, 22 Fla. 592, 600 (1886); *Bailey* v. *Hayman's*, 73 Fla. 1191, 1192, 76 So. 135, 136 (1917); *New Amsterdam Casualty Co.* v. *Utility Battery Mfg. Co.*, 122 Fla. 718, 725, 166 So. 856, 859 (1935). Such damages are recoverable under Florida law on the bond in the same action upon the dissolution of the injunction. Florida Annotated Statutes, § 64.16. Moreover, separate and apart from the question of the indemnity bond, the federal question presented here, as in *Liner*, revolves around the power of state courts to issue injunctions resulting in the frustration of our national labor policy and the denial of federally protected rights of party litigants. Such federal question has not been mooted.

As pointed out in our original brief, the Florida District Court of Appeal directed the employees to cross the picket line established by their fellow employees, or to quit. This was within its power, stated the Florida court, and "Absent a congressional or state enactment or a judicial pronouncement by the United States Supreme Court or the Florida

6. Local counsel were employed not only in Brevard County, Florida, but in Miami, Florida, as well.

Supreme Court (which refused certiorari) to the contrary, jurisdiction of the state court is not divested." (Pet., App. D, p. 26a). And, absent a pronouncement from this Court, as the Florida court states, a plaintiff in the Florida courts will be able to secure injunctions, while the same plaintiff would be denied an injunction in a federal court in the same state. Moreover, the statement by knowledgeable counsel that this Court's denial of certiorari in pre[7] *Lucas Flour*[8] and *Sinclair Refining Co.* v. *Atkinson*[9] cases of one of the same questions (Norris-LaGuardia) presented herein was "noteworthy" (Resp. Brief, p. 8), gives rise for further alarm. The denial of certiorari in earlier cases coupled with the instant and other state court decisions leads Respondent's counsel to the conclusion that the power of a state court in granting injunctions revolves around the whim of the state but that the contrary is true as regards federal courts.[10] And, if counsel's thinking represents even a par-

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7. *Philadelphia Marine Trade Ass'n* v. *Int'l Longshoremen's Ass'n, Local 1291*, 382 Pa. 326, 115 A. 2d 733, *cert denied*, 350 U. S. 843 (1955); *McCarroll* v. *Los Angeles County District Council of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322 (1957), *cert. denied*, 355 U. S. 932 (1958); and *McLean Distributing Co.* v. *Brewery & Beverage Drivers, Warehousemen & Helpers*, Local 993, 254 Minn. 204, 94 N. W. 2d 514, *cert. denied*, 360 U. S. 917 (1959).

8. *Local 174 Teamsters* v. *Lucas Flour Co.*, 362 U. S. 95 (1962).

9. 370 U. S. 195 (1962).

10. Respondent also cites *American Dredging Co.* v. *Local 25, Marine Division, International Union of Operating Engineers, AFL-CIO*, 338 F. 2d 837 (1964), *cert. denied* March 8, 1965, Docket No. 830 (Brief, pp. 8-9) and implicitly represents to the Court that the issue involved therein was whether the Norris-LaGuardia limitations extend to the states. Respondent is in error. The only issue before the Court in that case was the following:

> Does Federal court's original jurisdiction under Section 301 of Taft-Hartley Act over suits for breach of collective bargaining agreements permit removal of state court suit for injunction against strike in violation of no-strike clause? (Emphasis supplied)

tial consensus of the bar, not only will this create disparity of result between federal and state forums, but even from state to state the results will vary, as evidenced by the District Court of Appeal decision (notably its fn. 5 and its discussion in text circa thereof, Pet., App. D, p. 25a). Add to this the fact that some states have little Norris-LaGuardia Acts [11] while others do not (not to mention the separate state by state interpretation), and the product is a heterogeneous conglomeration of varying results where uniformity is essential if a federal national policy is to prevail. Viewed then in the overall framework and perspective of the regulation of labor matters, this case presents serious and compelling issues, the resolution of which is necesary to clarify the interplay of state and federal powers which this Court has so carefully developed since *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448 (1957) and *Garner* v. *Teamsters*, 346 U. S. 485 (1953). This case cuts across not only the question specifically ruled upon as regards federal courts in *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962), but presents the basic issue of federal preemption, as well, because it deals with peaceful picketing, the right to respect a picket line at one's own place of employment (or at least the right

11. The following states and territories have statutes prohibiting the granting of injunctions: Arizona, Connecticut, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Utah, Washington, Wisconsin, and Wyoming. Many of these statutes, like that of Maryland and Indiana, are patterned after, or copied from, the Norris-LaGuardia Act. Others, such as those of Illinois and Montana, are much less complete, setting forth little more than a statement of policy.

to have the NLRB make the initial determination) and the right to peaceably induce such respect.

Respectfully submitted,

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